

Request for comments

on the

Internet Assigned Numbers Authority (IANA) Functions

Agency: National Telecommunications And Information Administration, U.S.

Department of Commerce.

Action: Further Notice of Inquiry.

Fiona M. Alexander, Associate Administrator, International Affairs National Telecommunications and Information Administration (NTIA) U.S. Department of Commerce

1401 Constitution Avenue, Rm 4701

Washington, DC 20230

USA

Joint submission of Island Networks and Island Networks (Jersey) Island Networks, and Island Networks (Jersey) are the respective country-code Top Level Domain (ccTLD) managers for the .GG (Guernsey, Alderney and Sark) and .JE (Jersey) and submit this response to the Department's Further Notice of Inquiry jointly.

As noted in our submission to the original Notice of Inquiry we are long-time supporter of the multi-stakeholder Internet model, and we continue our commitment to full participation in ICANN's work including active participation as members of the Country-Code Names Supporting Organisation

We welcome the notice taken by the Department of a number of points we made in our submission to the original notice, although not referenced directly.

We welcome in particular that the Department has responded positively to the issues relating to the separation of powers (separation of policy-making role and the executory nature of the IANA function), and the issue of McGonnell fairness in respect of ICANN's dual role as registry manager (.INT) and IANA contractor.

-----

Island Networks and Island Networks adopt and endorse in its entirety the submission of Lesley Cowley OBE / Nominet UK to this Further Notice of Inquiry.

-----

We also re-adopt and re-submit our own comments that were made to the original Notice of Inquiry (erroneously referenced as the personal comments of the author on the Department's website).

We respectfully additionally submit the following:

The deference shown to national and territorial law and jurisdiction and the recognition of principle of subsidiarity is welcome, as is recognition that the guarantee of public policy authority of countries and territories in respect of country-code TLDs is local legislative sovereignty.

Nonetheless, the IANA Contractor must be required to hold itself to the standards set out in 'relevant international law', and cannot be required to act in any way that is inimical to standards of fundamental rights as accepted by civilised nations, and as are set out in, among others, the Universal Declaration of Human Rights, the European Convention on Human Rights and Fundamental Freedoms, the European Union's Charter of Fundamental Rights, the Canadian Charter of Rights and Freedoms, and of course, the Constitution of the United States itself.

It would be manifestly wrong if, for example, a side effect of the abovementioned recognition (which as has been said, is welcomed) would be if the IANA Contractor were to be placed in a position where it may be required by being bound by a different country's law and jurisdiction to carry out any act that was in any way repugnant to the US Constitution or the European Convention.

The current IANA contractor (ICANN) has on the face of its Articles of Incorporation (Art. 4) bound itself under the law of its state of incorporation (Calif.) to respect 'relevant international law'; and it should be noted that by its very definition, any matter of fundamental rights must be 'relevant'; and, that in addition, the ICANN's commitment to relevant principles of international law is binding and something more than merely perfunctory (see the judgment of Schwebel J, Tevrizian J and Paulsson as Panel in ICM Registry -v- ICANN ICDR 50 117 T 00224 08 at paragraph 140).

Regrettably, notwithstanding this fundamental commitment in its own constitution, ICANN's directors have for a period of over 4 months studiously failed to respond to the author's inquiry as to the IANA Contractor's view on the relevance of fundamental rights to the IANA function, which fundamental rights in democratic countries, if it were a public body (which it is not), the contractor would be bound to observe.

It is therefore the author's submission that flowing from the purpose of a requirement to respect national or territorial law, the IANA contractor, must necessarily be required to govern its actions, at bare minimum, by those shared principles common to democratic societies governed by the Rule of Law that are set out both in the 1948 Universal Declaration, and the 1950 European Convention.

Of particular relevance appear to be the right to free expression, the right to respect for private and family life, the right to peaceful enjoyment of possessions, and the right -- in any question affecting rights and obligations -- to a fair hearing before an independent and impartial tribunal. It may also be noted that another important example that is extremely relevant to the IANA Contract when insertion of new generic TLDs into the root is contemplated is the right to protection of intellectual property as set out in Article 17(2) of the European Union Charter.

The record shows that such rights are regularly engaged during ICANN and IANA's work, and it is clear that ICANN (the current IANA contractor) has on one more occasion(s) not lived up to the relevant standards (see, inter alia the report of the ccNSO Working Group on Delegation and Redelelegation and the case of ICM Registry -v-ICANN supra).

A requirement to respect fundamental rights, should accordingly, be made explicitly binding upon ICANN should the Department decide to re-appoint it as the IANA contractor, or alternatively upon whichever contractor is appointed.

Respectfully submitted

Nigel Roberts BSc LLB CEng FBCS

Director and CEO, Island Networks